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HB 160
RELATING TO ENVIRONMENTAL ASSESSMENTS

Statement for
House Committee on
Planning, Energy and Environmental Protection
Public Hearing - February 2, 1989

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HB 160 would amend Section 205-4.5 of Hawaii Revised Statutes (HRS) by excluding from the permitted uses of agricultural lands classified as A or B, the harvest of products of native forests. Section 2 of the bill would amend HRS 343-5 to modify the requirements for environmental assessment.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

The amendments proposed by HB 160 reflect recommendations made in response to HCR 267 (1987) that requested the Environmental Council, with the assistance of the Office of Environmental Quality Control and the Environmental Center, to review the existing applicability categories of HRS 343-5 and to determine the need for amendments so as to meet the environmental goals and objectives of the State.

Section 1. HRS 205-4.5 identifies some 12 categories of uses that are permitted in agricultural districts with productivity ratings classified as A or B. Among the presently permitted uses are actions such as wood chipping, hapu harvesting, or logging operations. These are all considered "cultivation" of "timber" under the present interpretation of HRS 205-4.5(a)(1). The amendment proposed in HB 160 would remove the present blanket approval to harvest products of native forests in agricultural districts with productivity ratings of A or B, but would allow for such harvest, by special permit, under the existing language of HRS 205-6.

Section 2. Amendment of paragraph (3) (page 4, lines 13 and 14), would add to the areas covered by Chapter 343-5 uses within the special management area as defined in Section 205A-23. As was noted and discussed in the course of our response to HCR 267 (1987), much confusion exists among developers, the general public, and even various agencies as a result of the dual, (State and County) systems for environmental assessment. In the case of Oahu and Hawaii counties, the environmental assessment and EIS (if required) are prepared in accordance with guidelines set up by the County but with reference to Chapter 343. Kauai and Maui have their own systems. Assessment procedures vary and there is a lack of consistency in acceptable content and format, hence preparers of assessments must deal with multiple systems. Furthermore, the evaluation of the adequacy of the final document and assessment decisions are similarly inconsistent between counties, so proposers of actions are again subject to multiple and sometimes conflicting statutory requirements. A single statute defining environmental assessment procedures for the shoreline management area as is proposed by HB 160 is more efficient and effective than duplicate "triggers" under separate county ordinances.

The present language of HRS 343-5 (a) (6) requires an environmental assessment for any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county. The intent of this paragraph is to provide adequate environmental information prior to decision making with respect to land use planning decisions. The proposed amendment would require environmental assessment for actions that propose any amendments to existing land use designations where such amendment would result in designations other than agriculture, conservation, or preservation. The rationale for this amendment was provided in the response to HCR 267 (1987) and is excerpted here as follows:

> Several years ago, it became apparent that there exists considerable uncertainty regarding the requirement for environmental assessments when an amendment to existing county general plans is proposed that would result in designations other than agriculture, conservation or preservation. Since the adoption of the EIS Rules in 1975, some general plans have changed such that they no longer contain any site specific land use designations or maps. These land use designations or maps are a part of other plans, such as development plans. This confusion regarding the applicability of Chapter 343, HRS, has resulted in the issuance of Attorney General Opinion No. 85-30. This opinion states that Section 343-5(a)(6), HRS, requires an environmental assessment for actions which propose any amendments to the City and County of Honolulu's development plans or similar plans. Another possible problem area involves the exemption from environmental assessment of county initiated general plans or amendments to any existing county general plan. County initiated general plans or amendments to any existing plans will still have impacts and therefore should be assessed.

We concur with the amendments proposed for paragraph (6).

A corollary amendment to that proposed in Section 1 relating to the harvest of products of native forests is the amendment proposed on page 6, lines 7 and 8, that would add to the list of actions that require environmental assessment actions that propose any use of agricultural lands other than that specified under Section 205-4.5. This amendment would assure that actions such as the harvesting of products of native forests would be subject to environmental assessment.

HRS 343-5 (b) (h), page 12, lines 8-11. A new category (h) is proposed which provides that rules or plans which clearly direct actions with potential environmental impact in areas specified in other provisions of this section shall be subject to environmental assessment. We concur with this proposed addition on the basis that management plans or the promulgation of agency rules may significantly affect natural resource developments or other environmentally sensitive land use management procedures. Such actions should be subject to environmental assessment when implementation of the plans or rules may significantly modify the environment. The Environmental Protection Agency has established procedures for the preparation of environmental impact statements in connection with standards, regulations and criteria pertinent to certain of its environmentally protective regulatory actions (39 FR 37119 Oct. 21, 1974). Hence we concur with the proposed amendment, however, we believe it would be more appropriately added as paragraph (10) to HRS 343-5(a) on page 6, line 9.

We appreciate the opportunity to provide comments on this bill.